

IN THE SUPREME COURT OF THE STATE OF DELAWARE

JAMES W. DRISCOLL,	§
	§ No. 320, 2005
Defendant Below-	§
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware
	§ in and for New Castle County
STATE OF DELAWARE,	§ Cr. ID No. 0004004134
	§
Plaintiff Below-	§
Appellee.	§

Submitted: January 27, 2006

Decided: April 4, 2006

Before **HOLLAND, JACOBS** and **RIDGELY**, Justices.

ORDER

This 4th day of April 2006, upon consideration of the briefs on appeal and the record below, it appears to the Court that:

(1) The defendant-appellant, James W. Driscoll, filed an appeal from the Superior Court’s March 28, 2005 order denying his request for reconsideration of its October 28, 2004 order modifying his violation of probation (“VOP”) sentences. We find no merit to the appeal. Accordingly, we AFFIRM.

(2) In October 2000, Driscoll pleaded guilty to a number of charges, including two counts of Burglary in the Third Degree (IN00-04-0917 and IN00-04-0926). He was sentenced to a total of 11 years

incarceration at Level V, to be suspended after 3 years for decreasing levels of probation. At a hearing on August 20, 2004, Driscoll was found to have committed a VOP. The Superior Court revoked his probation and sentenced him to a total of 8 years incarceration at Level V, to be suspended after 2 years for probation.

(3) In October 2004, Driscoll filed a motion to modify one of his sentences for Burglary in the Third Degree. In his motion, Driscoll requested that his 2-year Level V sentence in VN00-04-0917-01 be modified to 18 months at Level V, with 6 months at Level IV work release. According to Driscoll, the reason for his request was to provide a 6-month transitional period during which he could obtain housing and employment.

(4) On October 28, 2004, the Superior Court granted Driscoll's motion, but did not modify his sentence as requested. Rather, the Superior Court modified the sentence in VN00-04-0926-01 from 2 years Level V incarceration, suspended immediately for 2 years Level III probation, to 2 years Level V incarceration, suspended for 2 years Level IV work release, suspended after 6 months for 1 year of Level III probation. On March 28, 2005, the Superior Court denied Driscoll's motion for reconsideration of its order modifying his sentence on the ground that "[t]he sentence was modified to provide a level 4 on the offense the Court deemed appropriate."

(5) When the Superior Court imposes a sentence consisting of Level V time with decreasing levels of supervision, as in Driscoll's case, each component of the sentence is integral to the sentencing judge's overall "sentencing scheme" or "sentencing plan."¹ This Court has held that the imposition of a sentence is within the discretion of the Superior Court and, whenever possible, effect should be given to its intent.²

(6) In this case, the Superior Court granted Driscoll's request for Level IV time consistent with its overall "sentencing scheme," as reflected in its original August 20, 2004 sentencing order. Moreover, the modified sentence the Superior Court imposed was within the permissible statutory limits.³ As such, we find no error or abuse of discretion on the part of the Superior Court either in modifying Driscoll's sentence as it did or in denying Driscoll's motion for reconsideration.⁴

¹ *Defoe v. State*, 750 A.2d 1200, 1202 (Del. 2000); *Nave v. State*, 783 A.2d 120, 122-23 (Del. 2001).

² *Weber v. State*, 655 A.2d 1219, 1221 (Del. 1995).

³ *Mayes v. State*, 604 A.2d 839, 842 (Del. 1992). In fact, this sentence was lessened by six months.

⁴ Given this disposition of Driscoll's claim, there is no need for the Court to address the other issues raised by the State in its answering brief.

NOW, THEREFORE, IT IS ORDERED that the judgment of the
Superior Court is AFFIRMED.

BY THE COURT:

/s/ Jack B. Jacobs
Justice